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PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: : Attorney Docket No. 39994A
Glenn P. Vonk et al. : Confirmation No. 5157
Serial No.: 09/881,041 : Group Art Unit: 3626
Filed: June 15, 2001 : Examiner: Sereboff, Neal
For: A HEALTH OUTCOMES AND DISEASE :
MANAGEMENT NETWORK AND :
RELATED METHOD FOR PROVIDING :
IMPROVED PATIENT CARE :
:

REPLY BRIEF UNDER 37 CFR § 41.41(a)(1)

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Sir:

For the appeal to the Board of Patent Appeals and Interferences from the decision rejecting claims 1-7 as set forth in the final Office Action of November 13, 2009, Appellant submits the following reply brief in response to the Examiner's Answer of August 3, 2010 in accordance with 37 C.F.R. § 41.41(a)(1).

APPELLANT'S REPLY BRIEF
UNDER 37 C.F.R. § 41.41(a)(1)
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I. Status of Claims

There is no dispute as to the status of the claims as set forth in the Appeal Brief dated May 13, 2010, as noted in the August 3, 2010 Examiner's Answer.

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II. Grounds of Rejection on Appeal

There is no dispute as to the grounds of rejection on appeal as set forth in the Appeal Brief dated May 13, 2010, as noted in the August 3, 2010 Examiner's Answer.

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III. Reply to Examiner's Answer of August 3, 2010

**A. Claims 1-7 comply with the Written Description Requirement
Under 35 U.S.C. § 112, first paragraph**

Claim 1 recites, among other limitations, "said computer network being configured with electronic assessment tools to allow a health care provider to assess said patient health-related data to determine progress of the patient on the selected treatment program and whether information, which relates to the selected treatment program and is selected to advise the patient on how to improve the integration of the selected treatment program into the patient's lifestyle, needs to be conveyed to the patient in response to said progress determination."

Thus, claim 1 is at least directed to electronic assessment tools to allow a health care provider to assess said patient health-related data to determine

- (1) progress of the patient on the selected treatment program and
- (2) whether information, which relates to the selected treatment program and is selected to advise the patient on how to improve the integration of the selected treatment program into the patient's lifestyle, needs to be conveyed to the patient in response to said progress determination.

Appellants first refer to the following sections of the application to exemplify the workstations used by the patient (e.g., client 112) and healthcare manager, a centralized network 102, and electronic tools for assessment functions.

As described in paragraph [0042] of the originally filed application, the claimed invention is exemplified by a disclosed network 100 that includes one or more care teams 106 having, for example, healthcare managers. The members of the care team 106 have access to workstations, such as personal computers, handheld devices, pagers, wireless phones or the like, which can interact with the centralized network 102 via the Internet 108 to access data in the centralized database 104 and to provide data to the centralized database 104 as described in more detail below.

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As described in paragraph [0043] of the originally filed application, the network 100 further includes patients or clients 112 whom receive treatment by the care team 106, and whose health status and outcomes are monitored by members of the care team 106.

As described in paragraph [0044] of the originally filed application, the clients 112 each have access to a workstation 114, such as an interactive TV computer workstation or the like, which can access the centralized network 102 and centralized database 104 via the Internet 108. The workstation 114 also enables such information to be communicated from the client 112 to centralized database 104 which provide services to a care team in charge of monitoring the client 112. Patient education may be "prescribed" through the healthcare network by a member of the care team.

As described in paragraph [0046] of the originally filed application, tools are provided to assist providers as they respond to patient information including resource management, scheduling, guidelines, protocols, and behavioral tools. The provider team is much more productive since many of the routine diagnostic and assessment functions have been automated. Client information is archived into a database for further analysis to benchmark performance and identify opportunities for improvement of care practices.

As stated in the Appeal Brief, electronic assessment tools to allow a health care provider to assess said patient health-related data to determine (1) progress of the patient on the selected treatment program, as recited, are exemplified in the originally filed application at least in paragraphs [0051] and [0075]. For example, see the last paragraph on page 5 of the Appeal Brief and the quoted text from the application paragraphs [0051] and [0075] provided at the top of page 6.

Appellants also refer to the following sections of the application to exemplify electronic assessment tools to allow a health care provider to assess said patient health-related data to determine (1) progress of the patient on the selected treatment program.

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As described in paragraph [0082] of the originally filed application, Fig. 10 is a flowchart illustrating activities and operations performed by a healthcare manager. In step 1900, the healthcare manager can use client management tools, such as those associated with enrollment, as well as the CPOC, MPOC and monitoring or assessment management tools.

As described in paragraph [0083] of the originally filed application, the healthcare manager can use tools for monitoring the client's blood pressure, weight, glucose measurement and medications, and can use assessment tools which consider the client's medical history and results of various surveys relevant to the client's treatment. In step 2100, the healthcare manager performs evaluation activities, which include evaluation of individual client outcomes.

As stated in the Appeal Brief, electronic assessment tools to allow a health care provider to assess said patient health-related data to determine (2) whether information, which relates to the selected treatment program and is selected to advise the patient on how to improve the integration of the selected treatment program into the patient's lifestyle, needs to be conveyed to the patient in response to said progress determination, as recited, are exemplified in the originally filed application at least in paragraphs [0045], [0071], [0075], [0076], [0093] and [0095]. Appellants therefore respectfully request reconsideration of at least the citations discussed on pages 6 and 7 in the Appeal Brief.

For example, paragraph [0045] describes clients entering information about their medical condition into the database 104, and then members "of their care team 106 can review that information and monitor the clients' status as well as provide treatment information and recommendations to the client 112." Thus, paragraph [0045] exemplifies determining progress of a patient on a treatment program and whether information needs to be conveyed in response to the progress determination. See also:

Paragraph [0075] – "During this activity, the healthcare manager tracks physiological data from the client 112 and responds to values outside the normal limits. ... During this time, the centralized network

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102 is receiving input of the data and using preset parameters to determine if the data is outside normal limits. The centralized network 102 notifies the healthcare manager of the data that is outside the limits, and receives, stores and tracks the data provided by the client 112.”

Paragraph [0076] – “Specifically, the healthcare manager reviews the data from the client 112 regularly, evaluates whether the data is consistent with expected outcomes, and communicates with the client 112 regarding inconsistent outcomes.”

Paragraph [0095] – “During the evaluation process, the manager determines in steps 2205, 2215, 2225, 2235, 2245 and 2255 whether *information relating to the client's treatment program*, medication, stress and activity, disease process, symptom management and nutrition, respectively, *should be conveyed* to the client 112. If any of this information should be conveyed, the manager provides the information to the client 112 in steps 2210, 2220, 2230, 2240, 2250 and 2260, respectively, as appropriate. The manager then determines in step 2265 whether helpful health tips should be provided to the client 112 in step 2270.”

In subsection “A” of the “Response to Argument” section of the Examiner’s Answer, the Examiner states that he has reviewed Appellant’s citations and does not see explicit reference in the specification in support of the claim limitation “information, which relates to the selected treatment program and is selected to advise the patient on how to improve the integration of the selected treatment program into the patient’s lifestyle.”

Appellants respectfully submit that at least paragraph [0095] exemplifies “information, which relates to the selected treatment program” as claimed (e.g., see “whether *information relating to the client's treatment program*, medication, stress and activity, disease process, symptom management and nutrition, respectively, should be conveyed” per paragraph [0095]). Further, Appellants respectfully submit that at least paragraphs [0045], [0071] and [0075] exemplify

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information that “is selected to advise the patient on how to improve the integration of the selected treatment program into the patient’s lifestyle.” For example, per paragraph [0045], members of a care team 106 can review information from a client “and monitor the clients’ status as well as provide treatment information and recommendations to the client 112.” Per paragraph [0071], a healthcare manager tracks client’s responses to self-education modules, and “assesses the responses for consistent integration of CPOC and MPOC into the client’s lifestyle” where CPOC and MPOC are client and medical plans of care (POC), respectively. With reference to paragraph [0075], the healthcare manager “tracks physiological data from the client 112 and responds to values outside the normal limits.” Paragraph [0095] also states that the “manager determines whether *information relating to the client’s treatment program*, medication, stress and activity, *disease process*, *symptom management* and nutrition, respectively, should be conveyed.”

In view of the above, Appellants respectfully submit that claims 1-7 comply with the written description requirement under 35 U.S.C. §112, first paragraph.

B. Claims 1-7 are Definite Under 35 U.S.C. § 112, second paragraph

In subsection “B” of the “Response to Argument” section of the Examiner’s Answer, the Examiner alleges a “slight adjustment of the claim language within the Appellants response above.” The Examiner states that he is “unsure what is means to be ‘selected to advise the patient on how to improve the integration’.” The Examiner states that, because “the improvements are subjective, the Examiner does not understand how they are therefore selected.”

First, Appellants disagree that a “slight adjustment” of the claim language has been made. Second, claim 1 recites that “information …is selected” and not “improvements” as the Examiner suggests.

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More specifically, claim 1 recites that “information … is selected to advise the patient on how to improve the integration of the selected treatment program into the patient’s lifestyle,” among other limitations. Appellants submit that this claim language is sufficiently clear and definite, for at least the reasons stated in the Appeal Brief.

Finally, the Examiner states in the Final Office Action that the claim recitation is non-functional descriptive information with no patentable weight. Appellants disagree and respectfully submit that the recitation should be given patentable weight as it further limits “information” for which it is determined whether to be conveyed in response to the progress determination.

In view of the above, Appellants respectfully submit that claims 1-7 comply with the written description requirement under 35 U.S.C. §112, second paragraph.

C. Claims 1-7 are Not Obvious under 35 U.S.C. § 103(a) Over Ballantyne in view of Joao and further in view of Summerell

As stated in subsection “B” above, the claim recitation “which relates to the selected treatment program and is selected to advise the patient on how to improve the integration of the selected treatment program into the patient’s lifestyle” should be given patentable weight as it further limits “information” for which it is determined whether to be conveyed in response to the progress determination. In other words, the recited “information” that is determined to be conveyed also “relates to the selected treatment program” and “is selected” as recited.

Joao does not disclose electronic assessment tools to allow a health care provider to assess said patient health-related data to determine (1) progress of the patient on the selected treatment program and (2) whether information, which relates to the selected treatment program and is selected to advise the patient on how to improve the integration of the selected treatment program into the patient’s lifestyle, needs to be conveyed to the patient in response to said progress

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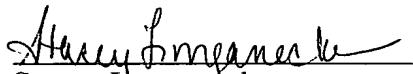
determination. Joao, at most, discloses a system for performing a diagnosis, suggesting a treatment, and arguably monitoring treatment. Joao, however, does not disclose electronic assessment tools to allow a health care provider to assess said patient health-related data to determine whether information, which relates to the selected treatment program and is selected to advise the patient on how to improve the integration of the selected treatment program into the patient's lifestyle, needs to be conveyed to the patient in response to said progress determination.

Accordingly, withdrawal of 35 U.S.C. § 103(a) rejection of the claims 1-7 is respectfully requested.

D. Conclusion

For the reasons presented herein, Appellant submits that claims 1-7 meet the requirements of 35 U.S.C. § 112, first and second paragraphs, and are not rendered obvious under 35 U.S.C. § 103(a) by the cited references of record. Accordingly, reversal of the final rejection and allowance of claims 1-7 are respectfully requested.

Respectfully submitted,


Stacey Longanecker
Attorney of Applicants
Reg. No. 33,952

Roylance, Abrams, Berdo & Goodman, L.L.P.
1300 19th Street, N.W., Suite 600
Washington, D.C. 20036
(202) 659-9076

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